

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No. 1783 of 2005
Date of Decision: August 28, 2006

Veer Kaur

.....Petitioner

versus

Ashok Kumar and another

.....Respondents

Present:- Shri Rakesh Nehra, Advocate, for the petitioner

Shri Harsh Kinra, Advocate, for respondent No.1

HEMANT GUPTA, J.

The plaintiff is in revision petition aggrieved against the order passed by the learned trial Court on 3.5.2004 whereby the petitioner was directed to affix ad valorem court fees in a suit challenging the sale deed executed by her father Shingara Singh on 25.10.1989.

The learned trial Court directed the petitioner to affix ad valorem court fees vide the impugned order on the ground that the petitioner has challenged the document in which she is a party. Subsequently, on account of non payment of court fees, the learned trial Court passed an order of rejection of plaint on 4.8.2004. The plaintiff challenged the said order before the learned first Appellate Court. The petitioner herein has also challenged the order passed by the learned trial Court on 3.5.2004 before this Court in Civil Revision No. 3609 of 2004. Since the suit was dismissed consequent to rejection of plaint on 4.8.2004, the revision petition was

dismissed as infructuous with liberty to the petitioner to challenge the order of rejection of plaint in appropriate proceedings. After the order was passed by this Court, the appeal against the order rejecting the plaint was partly accepted by the learned first Appellate Court on 22.02.2005 and the petitioner was granted time to affix ad valorem court fees in terms of order dated 3.5.2004. Now the petitioner is in revision challenging the order passed by the learned trial Court on 3.5.2004. Learned counsel for the petitioner states that, in fact, the challenge in the present revision petition is also to the order passed by the learned first Appellate Court on 22.02.2005 as well whereby the order passed by the learned trial Court to pay ad valorem court fees was maintained.

The plaintiff-petitioner while filing a suit for declaration has claimed herself to be in possession of the suit land. The plaintiff has not sought consequential relief of possession. In **Niranjan Kaur vs. Nirbigan Kaur, 1982 PLR 127**, a Full Bench of this Court has held that where the plaintiff claims possession as a consequential relief, in that eventuality the plaintiff is liable to pay court fees on the subject matter of the suit. The said fact has been considered by this Court in **Civil Revision No. 790 of 2005 titled Bhagwan Kaur and others vs. Amrik Singh and others, decided on 08.08.2006**.

In view of the above, I am of the opinion that the order passed by the learned trial Court calling upon the petitioner to affix ad valorem court fees is not sustainable in law. For the same reason, the order of learned first Appellate Court whereby the order of the learned trial Court regarding affixation of ad valorem court fees is maintained, is not sustainable in law.

Consequently, the revision petition is allowed and the

impugned orders passed by the learned trial Court and the learned first Appellate Court are set aside.

The parties through their learned counsel are directed to appear before the learned trial Court on 9.10.2006 for further proceedings in accordance with law.

August 28, 2006
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(HEMANT GUPTA)
JUDGE